IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

Jagdish

Versus

State and ors.

****

S.B. CRIMINAL REVISION PETITION NO.1084/2005

Under Section 397 r/w. 401 Cr.P.C. against the order dated 19/9/2005 passed by the learned Additional Sessions Judge, Shahpura, District Jaipur in Sessions Case No.4/2003 whereby he has rejected the application of the petitioner u/S.319 Cr.P.C.

****

Date of Order:- 3 July, 2006.

PRESENT

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Suresh Kumar Gupta for the complainant-petitioner.
Mr. Arun Sharma, P.P. for the State.
Mr. Rajesh Parashar for the accused-respondent.

****

BY THE COURT:-

The instant Cr.Revision Petition under Section 397 r/w. 401 Cr.P.C. is directed against the order dated 19/9/2005 passed by the learned Additional Sessions Judge, Shahpura,

District Jaipur in Sessions Case No.4/2003 whereby, the application of the petitioner u/S.319 Cr.P.C. has been rejected.

Briefly stated, the relevant facts are that the accused-respondents and others gave beating to the petitioner and his family members after entering into his house on 23/9/2002 at about 6.00 P.M. An F.I.R. being No.533/2002 was lodged at 8.15 P.M. on the same night about the aforesaid occurrence by one Ramgopal Yadav for offences under Sections 147, 452 and 323 IPC. After investigation, charge-sheet was filed in the Court of A.C.J.M. Shahpura for offences under Sections 341, 323 and 307 IPC against accused Kalu only. The case was committed to the Court of Additional District & Sessions Judge, Shahpura for trial. After hearing both sides and upon a perusal of the materials placed on record, charges were framed against accused Kaluram. The prosecution examined 17 witnesses out of whom, PW-1 Goru, PW-2 Bhagwan, PW-3 Jagdish, PW-4 Girdhari, PW-12 Bhagirath Prasad and PW-13 have turned hostile. They did not support the prosecution story. Other witnesses simply named the other accused persons. They did not specify any overt act on their part.

Petitioner submitted an application under Section 319 Cr.P.C. on 16/4/2005 stating that from the materials on record and the evidence that has been recorded during trial, offences under Sections 147, 148, 149, 323, 325, 341, 307 and 452 IPC are clearly made out against the accused persons. So, they may also be arraigned as additional accused. The court after hearing both the sides and upon scrutiny of the evidence on record, declined to arraign the additional accused persons observing that it would tantamount to the abuse of the process of the court. Accordingly, the application was rejected.

Aggrieved by the said order, the petitioner has filed this revision petition.

I have heard learned counsel for the parties as well as learned Public Prosecutor for the State and have also perused the relevant record.

It is contended on the basis of **Rakesh and anr. Vs. State of Haryana : (2001) 6 SCC 248** that the Hon'ble Apex Court has held that although power under Section 319 Cr.P.C. should be sparingly exercised but where prosecution witnesses named certain persons has been

involved in a serious crime, their addition as accused in exercise of power would not be unwarranted. In this case, father of the prosecutrix lodged an F.I.R. alleging commission of offences under Sections 363, 366 and 376 IPC by the appellants and one P. According to the complainant, three persons had taken away his daughter due to previous enmity with the object of committing rape upon her. The girl and P were found in Noida. The police found that the appellants were not involved in the case therefore, charges were framed against only P. After examination of PW1 to PW3 and the prosecutrix, Public Prosecutor filed an application under Section 319 Cr.P.C. for arraigning the appellants as additional accused. The trial court allowed the application and summoned them as additional accused to stand trial. Revision filed was also dismissed by the High Court. It was held that evidence of the witnesses even without cross-examination would be prima-facie material which would enable the sessions court to decide whether powers under Section 319 Cr.P.C. are to be exercised or not. It is further contended on the basis of **Vipin Anand and ors. Vs. State of Rajasthan and anr. : 2005(2) SCC 667** that where

there is no chance of conviction on the materials available there shall be no reason for interference in the order of the trial court.

The power under Section 319 Cr.P.C. is discretionary power of the trial court. The discretion exercised by the trial court cannot be lightly interfered with unless it shows that the order refusing to implead the accused has been made mechanically or it is arbitrary or perverse. The trial court while refusing to arraign the additional accused has taken into account every aspect of the matter and entire material placed before it; more particularly the terms of conviction of petitioner who have been sought to be impleaded as additional accused. The trial court has found case of the complainant full of contradictions on material points. The statements of the witnesses are not duly corroborated by the medical evidence. The trial court has further found that there is little chance of their conviction in the case.

In **Michael Machado and Anr. Vs. Central Bureau of Investigation & Anr. : 2000 Cr.L.J. 1706 (SC),** the Hon'ble Supreme Court has held that the power u/S.319 Cr.P.C. is

discretionary and should be exercised only to achieve the criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. It was further held that the judicial exercise is called for keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The Apex Court has further held that the Court, while examining an application under Section 319 Cr.P.C. has also to bear in mind that there is no compelling duty of the court to proceed against other persons. In a nut shell, it means that for exercise of discretion under Section 319 Cr.P.C., all relevant factors have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence has come on record implicating the persons sought to be added as an accused.

In **Krishnappa Vs. State of Karnataka : AIR 2004 SCW 4809**, the Hon'ble Supreme Court, while examining the case on identical facts and applying the test of the ratio laid down in

Michael Machado (supra), held that the trial court is right in rejecting the application. The Apex Court set-aside the order of the High Court and restored that of the Magistrate by which the application seeking impleadment of the persons sought to be arraigned as accused was rejected. The Apex Court has dealt with object of revisional jurisdiction in the case of **Jagannath Choudhary Vs. Ramayan Singh : 2002 (5) SCC 659** and has observed that object of revisional jurisdiction is conferred upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment, which has resulted on the one hand in some injury to the maintenance of law and on the other hand, in some undeserved hardship to the individuals. Where the Court concerned does not appear to have committed any error or material irregularity or impropriety in passing the impugned judgment and order, the revision cannot succeed.

The learned trial court has by a detailed and well speaking order dismissed the

application filed by the complainant-petitioner under Section 319 Cr.P.C. The learned trial court has considered the submissions of the various prosecution witnesses and has arrived at the conclusion that from the oral evidence it cannot be said that the non petitioners had indulged in the alleged offences and there are weak chances of their conviction.

In view of the law laid down by the Hon'ble Apex Court in **Harihar Chakraverty Vs. State of West Bengal : AIR 1954 SC 266**, the revisional jurisdiction is not to be lightly exercised when it is invoked by a private complainant.

In view of the foregoing discussion, I am of the well considered view that the approach of the learned court below is well reasoned and based on the guidelines and law laid down by the Hon'ble Apex Court. In the face of the materials on record, no fault can be found with the order passed by the learned trial court rejecting the application under Section 319 Cr.P.C.

Consequently, there being no pith and substance in this petition, the same deserves to be and is hereby dismissed.

(HARBANS LAL), J.

anil/-